

2 Amendment in the Nature of a Substitute

3 December ~~620~~, 2016

4 BILL 21-415

11 A BILL

13 21-415

16 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

21 To establish the Family and Parental Paid Leave program and a minimum requirement
22 for the provision of family and parental paid leave ~~system~~benefits for individuals employed in
23 the
24 District of Columbia, to require an annual audit of the program, to establish a refundable tax
25 credit for small businesses that provide paid leave benefits, to require implementation of
26 this minimum requirement within one year, and to make conforming amendments.

29 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
30 act may be cited as the “Universal Paid Leave Amendment Act of 2016”.

31 ~~Title~~TITLE I. Establishment of Family and Parental Paid Leave Program.

32 Sec. 101. Definitions.

33 For the purposes of this title, the term:

34 -(1) ~~“Average weekly wage”~~“Covered employee” means an individual who has the total
35 wages subject~~status of an employee at the time their covered employer is notified of the~~
36 individual’s intent to contribution~~take leave to which they are or will be entitled~~ under section

~~103102~~ of this title ~~during the 4 quarters out of the 5 quarters immediately preceding the~~
~~qualifying event during which the individual's wages were highest divided by 52.~~

~~(2) "Bonding" means the formation of a close emotional~~
~~relationship between a parent or primary caregivers and an infant or child.;~~

~~(3) "Covered employee" means any employee who spends~~ “(A) Spends more
than 50% of his or her work time working in the District of Columbia for a covered employer.~~—~~
; and

~~(4)~~ “(B) Has been employed by the covered employer for a minimum of 14 days
during the 52 calendar weeks immediately preceding the qualifying event or notification to the
covered employer of the qualifying event for which the family, medical, or parental paid leave is
being or will be taken.”

(2) "Covered employer" means:

(A) ~~Any~~An individual, partnership, general contractor, subcontractor,
association, corporation, business trust, or any group of persons who directly or indirectly or
through an agent or any other person, including through the services of a temporary services or
staffing agency or similar entity, employs or exercises control over the wages, hours, or working
conditions of an employee and is required to pay unemployment insurance on behalf of its
employees in accordance with the District of Columbia Unemployment Compensation
Amendment Act, approved August 28, 1935 (49 Stat. 954; D.C. Official Code § 51-101 et
seq.;); provided, that the term “covered employer” ~~shall not include the;~~

(i) The United States, the District of Columbia, or any employer who the
District of Columbia is not authorized to tax under federal law or treaty; or

~~_____ (B) A self-employed individual who has opted into the family and parental paid leave program established pursuant to this Act.~~

~~(5(ii) Self-employed individuals.~~

(3) “D.C. FMLA” means the District of Columbia Family and Medical Leave Act of 1990, effective March 14, 1991 (D.C. Law 8-181; D.C. Official Code § 32-501 *et seq.*).

~~(6) “Eligible individual” means a person who is not an employee of the United States, the District of Columbia, or an employer the District of Columbia is not authorized to tax under federal law or treaty, who meets the requirements of this Act and regulations issued pursuant to this Act and:~~

~~(A) Has been a covered employee during some or all the 52 calendar weeks immediately preceding the qualifying event for which family or parental paid leave is being taken; or _____~~

~~_____ (B) A self-employed individual who earned self-employment income for work performed primarily in the District of Columbia during some or all of the 52 calendar weeks immediately preceding the qualifying event for which family or parental paid leave is being taken and has opted into the family and parental paid leave program established pursuant to this Act.~~

~~(7~~ (4) “Family or parental paid leave benefits” means the monetary benefits provided pursuant to this ~~Act~~act.

~~(85)~~ “Family member” means:

(A) A biological, adopted, or foster son or daughter, a stepson or stepdaughter, a legal ward, a son or daughter of a domestic partner, or a person to whom ~~an eligible individual~~a covered employee stands in loco parentis;

(B) A biological, foster, or adoptive parent, a parent-in-law, a stepparent, a legal guardian, or other person who stood in loco parentis to ~~an eligible individual~~ a covered employee when the ~~eligible individual~~ covered employee was a child;

(C) A person to whom ~~an eligible individual~~ a covered employee is related by domestic partnership, as defined by section ~~12~~(4) of the Health Care Benefits Expansion Act of 1992, effective June 11, 1992 (D.C. Law 9-114; D.C. Official Code § 32-701(4)), or marriage; or

(D) A grandparent of ~~an eligible individual~~ a covered employee.

(~~96~~) “Health care provider” has the same meaning as provided in section 2(5) of the District of Columbia Family and Medical Leave Act of 1990, effective March 14, 1991 (D.C. Law 8-181; D.C. Official Code § 32-501(5)).

(~~107~~) “Intermittent leave” means family or parental paid leave taken in increments of no less than one week, rather than for one continuous period of time greater than one week.

~~(11) “Open enrollment period” means:~~

~~—— (A) The first 90 days after the Mayor begins to collect the payroll tax pursuant to Section 103 of this Act;~~

~~(B) The 60 days following the commencement of business in the District of Columbia by a self-employed individual; or~~

~~(C) Beginning with calendar year 2020 and in each year thereafter, the months of November and December.~~

(~~12~~ 8) “Qualifying family leave” means paid leave for up to a maximum ~~amount~~ of 86 workweeks within a 52 workweek period that ~~an eligible individual~~ a covered employee may take ~~following the~~ following the occurrence of a qualifying family leave event.

(139) “Qualifying family leave event” means the diagnosis or occurrence of a serious health condition of a family member of ~~an eligible individual~~ a covered employee.

(1410) “Qualifying medical leave” means paid leave for up to a maximum of 2 workweeks within a 52 workweek period that a covered employee may take within one year following the occurrence of a qualifying medical leave event.

(11) “Qualifying medical leave event” means the diagnosis or occurrence of a serious health condition of a covered employee.

(12) “Qualifying parental leave” means paid leave for up to a maximum of 148 workweeks within a 52 workweek period that ~~an eligible individual~~ a covered employee may take within one year of the occurrence of a qualifying parental leave event.

(1513) “Qualifying parental leave event” means:

(A) The birth of a child of ~~an eligible individual~~ a covered employee;

(B) The placement of a child with ~~an eligible individual~~ a covered employee for adoption or foster care; or

(C) The placement of a child with ~~an eligible individual~~ a covered employee for whom the eligible individual legally assumes and discharges parental responsibility.

(1614) “Retaliate” means to:

(A) Commit any form of intimidation, threat, reprisal, harassment, discrimination, or adverse employment action, including discipline, discharge, suspension, transfer or assignment to a lesser position in terms of job classification, job security, or other condition of employment;

127 (B) Reduce pay or hours or deny an individual additional hours;
128 (C) Inform another employer that the person has engaged in activities protected
129 by this title; or
130 (D) Report or threaten to report the actual or suspected citizenship or immigration
131 status of an employee, former employee, or family member of an employee or former employee,
132 to a federal, state, or local agency.

133 ~~(17) “Self-employment income” means gross income earned from carrying on a trade or~~
134 ~~business as a sole proprietor, an independent contractor, or as a member of a partnership.~~

135 ~~(18)~~ “(15)(A) Serious health condition” means a physical or mental illness, injury, or
136 impairment that requires inpatient care in a hospital, hospice, or residential health care facility, or
137 continuing treatment or supervision at home by a health care provider or other competent
138 individual. For the purposes of this definition:

139 (A)(1) The term “treatment” includes, but is not limited to, examinations to
140 determine if a serious health condition exists and evaluations of the condition.

141 (2) Treatment does not include routine physical examinations, eye
142 examinations, or dental examinations.

143 (3) A regimen of continuing treatment such as the taking of over-the-
144 counter medications, bed rest, or similar activities that can be initiated without a visit to a health
145 care provider is not, by itself, sufficient to constitute continuing treatment for the purposes of this
146 Act.

147 (B) The term “inpatient care” is the care of a patient in a hospital, hospice, or
148 residential medical care facility for the duration of one overnight period or longer, or any
149 subsequent treatment in connection with such inpatient care.

(C) The term “incapacity” means inability to work, attend school, or perform other regular daily activities due to the serious health condition, treatment of the serious health condition, or recovery from the serious health condition.

(D) Conditions for which cosmetic treatments are administered do not satisfy this definition; provided that procedures related to an individual’s gender transition shall not be considered cosmetic treatments for the purposes of this subparagraph.

(E) A serious health condition involving continuing treatment by a health care provider means any one or more of the following:

(i) A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also involves:

(I) Treatment of two or more times within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse under direct supervision of a health care provider, or by a provider of health care services under orders of, or on referral by, a health care provider. For the purposes of this subparagraph, “extenuating circumstances” means circumstances beyond an individual’s control that prevent the follow-up visit from occurring as planned by the health care provider;

(II) The first, or only, in-person treatment visit within 10 days after the first day of incapacity if “extenuating circumstances” exist; or

(III) Treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under the supervisions of the health care provider.

(ii) Any period of incapacity or treatment for such incapacity due to a

chronic serious health condition. A chronic serious health condition is one which:

(I) Requires two or more periodic visits annually) for treatment by a health care provider or by a nurse under direct supervision of a health care provider;

(II) Continues over an extended period of time, which shall include recurring episodes of a single underlying condition; and

(III) May cause episodic rather than a continuing period of incapacity.

(iii) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The family member of an eligible individual must be under continuing supervision of, but need not be receiving active treatment by, a health care provider; or

(iv) Any period of absence to receive multiple treatments (including any period of recovery from the treatments) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, for:

(I) Restorative surgery after an accident or other injury; or

(II) A condition that would likely result in a period of incapacity of more than three consecutive, full calendar days in the absence of medical intervention or treatment.

(1916) “Wages” has the same meaning as provided in section 1(3) of the District of Columbia Unemployment Compensation Act, approved August 28, 1935 (49 Stat. 946; D.C. Official Code § 51-101(3)); provided, that the term “wages” ~~also~~ shall include self-employment income earned by a self-employed individual who has opted into the family and parental paid leave program established pursuant to this ~~Act~~ act.

196 Sec. 102. ~~Establishment of a paid family and parental leave program.~~

197 ~~(a) The Mayor shall establish a paid family and parental leave program to administer the~~
198 ~~paid family and parental leave benefits provided for in this Act.~~

199 ~~(b)(1) The Mayor shall issue rules within 180 days of the effective date of this Act to~~
200 ~~implement this Act.~~

201 ~~———(2) The proposed rules shall be submitted to the Council for a 45-day period of~~
202 ~~review, excluding Saturdays, Sundays, holidays, and days of Council recess. If the Council does~~
203 ~~not approve or disapprove the proposed rules, in whole or in part, by resolution within the 45-day~~
204 ~~period, the proposed rules shall be deemed approved.~~

205 ~~Sec. 103. Contributions to the Universal Paid Leave Implementation Fund~~

206 ~~—(a)(1) A covered employer shall contribute 0.62% of the annual wages of each of its~~
207 ~~covered employees to the Universal Paid Leave Implementation Fund in a manner prescribed by~~
208 ~~the Mayor.~~

209 ~~———(2) If a covered employer does not pay a covered employee an annual salary, the~~
210 ~~covered employer's contribution to the Universal Paid Leave Implementation Fund for that~~
211 ~~covered employee shall be calculated using the annualized income installment method.~~

212 ~~(b) A self-employed individual who has opted in to the family and parental paid leave~~
213 ~~program, established pursuant to this Act, shall contribute 0.62% of his or her annual self-~~
214 ~~employment income to the Universal Paid Leave Implementation Fund in a manner prescribed~~
215 ~~by the Mayor.~~

216 ~~(c) Within 180 days of the effective date of this Act, the Mayor shall provide public~~
217 ~~notice to covered employers regarding the manner in which contributions to the Universal Paid~~
218 ~~Leave Implementation Fund shall be collected.~~

219 ~~(d) By March 1, 2019, the Mayor shall begin to collect contributions to the Universal~~
220 ~~Paid Leave Implementation Fund from covered employers and self-employed individuals who~~
221 ~~have opted into the family and parental paid leave program established pursuant to this Act.~~

222 ~~(e) Upon a self-employed individual's opting into the family and parental paid leave~~
223 ~~program established pursuant to this Act, the Mayor shall provide notice to that individual~~
224 ~~regarding the manner in which contributions to the Universal Paid Leave Implementation Fund~~
225 ~~shall be collected from the individual.~~

226 ~~(f) A covered employer who fails to contribute any amount required by this section to the~~
227 ~~Universal Paid Leave Implementation Fund shall be subject to the same notice requirements,~~
228 ~~procedures, interest, penalties, and remedies set forth in section 4 of the District of Columbia~~
229 ~~Unemployment Compensation Act, effective August 28, 1935 (49 Stat. 948, D.C. Official Code~~
230 ~~§ 51-104).~~

231 ~~Sec. 104. Duration and amount of benefits.~~

232 ~~(a) Upon~~(a) A covered employee shall be entitled to qualifying family, medical, or
233 parental leave upon the occurrence of a qualifying family leave event ~~or,~~ qualifying
234 ~~parental~~medical leave event, ~~and after~~or qualifying parental leave event.

235 ~~(b) After~~ a one week waiting period during which no benefits are payable, ~~an eligible~~
236 ~~individual~~a covered employee shall be entitled to receive payment of his or her family, medical
237 or parental paid leave benefits ~~- from their covered employer.~~

238 ~~(b) - Anc)~~ A covered employee shall be eligible ~~individual may submit a claim for~~
239 ~~payment of~~ his or her family or parental paid leave benefits for a period during which he or she
240 does not perform his or her regular and customary work following the occurrence of a qualifying
241 family leave event, qualifying medical leave event, or qualifying parental leave event; provided,

242 that ~~an eligible individual~~ a covered employee shall not be entitled to receive payment for more
243 than one qualifying event in a 52 work period.

244 (ed) The International Classification of Diseases, Tenth Revision (ICD-10), or
245 subsequent revisions by the World Health Organization to the International Classification of
246 Diseases, along with the physician or caretakers assessments shall be used to determine the
247 appropriate length of paid family leave ~~an eligible individual~~ a covered employee is entitled to,
248 up to a maximum of ~~eight~~ 6 workweeks, based on the serious health condition of the ~~eligible~~
249 ~~individual's~~ covered employee's family member.

250 ~~(d) An eligible individual~~ (e) A covered employee may receive payment for his or her
251 family and parental paid leave benefits for intermittent leave; provided, the total amount of
252 intermittent leave shall not exceed ~~8 workweeks in a 52 workweek period for a qualifying family~~
253 ~~leave event or 11 workweeks in a 52 work week period for a qualifying parental leave event.~~;

254 ~~(e)(1) An eligible individual who earns an average weekly wage at a rate that, on~~
255 ~~an annualized basis, is equal to or less than 150% of the District's minimum wage~~ (1) Six
256 workweeks in a 52 workweek period for a qualifying family leave event;

257 (2) Two workweeks in a 52 workweek period for a qualifying medical leave
258 event; or

259 (3) Eight workweeks in a 52 work week period for a qualifying parental leave
260 event.

261 (f) A covered employee shall be entitled to payment of family and parental leave benefits
262 at a rate that shall equal 90% of that ~~eligible individual's~~ covered employee's average weekly
263 wage rate; to a maximum of \$1,000 per week;

~~(2) An eligible individual who earns an average weekly wage at a rate that, on an annualized basis, is greater than 150% of the District's minimum wage shall be entitled to payment of family and parental leave benefits at a rate that shall equal:~~

~~(i) 90% of 150% of the District's minimum wage; plus~~
~~(ii) 50% of the amount by which the eligible individual's average weekly wage rate exceeds 150% of the District's minimum wage; provided, that no eligible individual shall be entitled to payment of family and parental leave benefits at a rate in excess of \$1,000 per week.~~

~~(f) By March 15, 2020, the Mayor shall commence the payment of family and parental leave benefits provided for in this Act.~~

~~Sec. 103~~¹⁰⁵. Self-employed individuals.

~~(a)(1) An individual who earns self-employment income and who opts in to the family and parental paid leave program shall remain be continuously enrolled in the program until such time as he or she elects to opt out; provided, that an individual who earns self-employment income who has opted into the program may only opt out of the program during an open enrollment period.~~

~~(2) If an individual who earns self-employment income has chosen not to opt in to the family and parental paid leave program, he or she shall only be permitted to enroll, or re-enroll, in the program during an open enrollment period in a manner prescribed by the Mayor and shall make contributions to the family and parental paid leave fund for no less than three consecutive years.~~

285 ~~(b) If an individual has chosen to withdraw from the program two or more times, he or~~
286 ~~she shall be barred from re-enrolling in the program for a period of five years from the date of~~
287 ~~his or her withdrawal from the program.~~

288 ~~(c) Beginning with January 1, 2020, an individual who previously opted out of or~~
289 ~~withdrawn from coverage shall not be eligible for benefits for the first year after enrolling or~~
290 ~~reenrolling in the Program.~~

291 ~~(d)(1) If an eligible individual who earns self-employment income does not make a~~
292 ~~timely payment then the District shall notify the eligible individual of the payment due. After~~
293 ~~notice has been given, and if payment is not received, then the eligible individual shall be~~
294 ~~disenrolled and shall not be eligible for family or parental paid leave benefits pursuant to this~~
295 ~~Act.~~

296 ~~(2) The eligible individual may re-enroll consistent with requirements of this~~
297 ~~section.~~

298 ~~Sec. 106. Administration of the Family and Parental Paid Leave Program.~~

299 ~~(a) The Mayor shall establish reasonable procedures and forms for filing claims for~~
300 ~~benefits under this Act and shall specify what supporting documentation is necessary to support a~~
301 ~~claim for benefits, including requiring proof of a serious health condition and the length of leave~~
302 ~~expected based on industry standards used by health care professionals to label diagnosis of~~
303 ~~medical conditions and treatments.—~~

304 ~~(b) Claims for family or parental paid leave benefits shall be made in accordance with~~
305 ~~this Act and any regulations that the Mayor may prescribe for administration of the program~~
306 ~~provided for in this Act.~~

~~(c) The Mayor shall notify the employer within 5 business days of a claim being filed pursuant to this title.~~

~~(d) Within 10 business days after an individual has filed a claim for benefits under this title, the Mayor shall make and notify an individual of:~~

~~———(1) an initial determination as to an individual's eligibility to receive benefits pursuant to this title;~~

~~———(2) the weekly amount payable to the eligible individual;~~

~~———(3) the week with respect to which payments will commence;~~

~~———(4) the maximum duration thereof; and~~

~~(5) the right to appeal to the Office of Administrative Hearings if an eligible individual does not agree with one or more of the determinations made by the Mayor pursuant to this subsection.~~

~~(e) If an individual is deemed eligible to receive family and parental paid leave benefits provided for under this Act, the Mayor shall make the first payment to the eligible individual within 10 business days of the determination of eligibility and subsequent payments shall be made biweekly thereafter.~~

~~———(f) The Mayor may use information sharing and integration technology to facilitate the disclosure of relevant information or records so long as an individual consents to the disclosure as required under District law.~~

~~(g)(1) The Mayor shall create a user friendly, online portal for the submission and management of forms and documents necessary to administer the family and parental paid leave program.~~

~~————— (2) The portal shall be accessible to the public via the Internet, and shall be designed with a privacy protected, user friendly, interactive, searchable interface that provides information relevant to claimants, employers, and the public.~~

~~————— (3) No individual information shall be posted on this portal.~~

~~————— (4) The portal shall be compliant with Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191; 42 U.S.C. § 300gg, 29 U.S.C § 1181 et seq. and 42 U.S.C. 1320d et seq.).~~

~~————— (5) The components of the portal accessible to the general public shall include at a minimum, real time, searchable parameters for the purpose of collection of reportable data, tracking program use, and to use data to reduce the cost of the program and to integrate the program with existing District benefit programs.~~

~~————— (6) The portal, and all associated software necessary to administer the family and parental paid leave program, shall be designed to be able to handle the benefits provided for in this Act and including paid medical leave (self care) benefits.~~

~~(h) Information contained in the files and records pertaining to an individual under this title are confidential and not open to public inspection, other than to public employees in the performance of their official duties. However, an individual or an authorized representative of an individual may review his or her own records or receive specific information from his or her own records. All documents may be accepted and distributed electronically pursuant to D.C. Official Code § 28-4917.~~

~~(i)(1) The Mayor shall prescribe and provide to covered employers a notice explaining:~~

~~————— (A) The employees' right to paid family and parental leave benefits under this Act and the terms under which such leave may be used;~~

~~—————(B) That retaliation by the covered employer against the covered employee for requesting, applying for, or using paid family and parental paid leave benefits is prohibited;~~

~~—————(C) That an employee who works for a covered employer with under 20 employees shall not be entitled to job protection if he or she decides to take family or parental paid leave pursuant to this Act; and~~

~~(D) That the covered employee has a right to file a complaint and the procedures established by the Mayor for filing a complaint.~~

~~(2) The notice shall comply with the Language Access Act of 2004, effective June 19, 2005 (D.C. Law 15-167; D.C. Official Code § 2-1931 *et seq.*).~~

~~—————(3) Each covered employer shall, at the time of hiring and annually thereafter, and at the time the covered employer is aware that the leave is needed, provide this notice to each covered employee. Each covered employer shall also post and maintain the notice in a conspicuous place in English and in all languages in which the Mayor has published the notice.~~

~~—————(4) A covered employer who violates this notice requirement shall be assessed a civil penalty not to exceed \$100 for each covered employee to whom individual notice was not delivered and \$100 for each day that the covered employer fails to post the notice in a conspicuous place. No liability for failure to post notice will arise under this section if the Mayor has not prescribed the notice required by this section.~~

~~(j) (1) The Mayor shall conduct a public education campaign, which shall be paid for out of the Fund, to inform individuals of the benefits provided for in this Act; provided that no more than 0.25% of annual revenue deposited into the Fund shall be used for this purpose.~~

~~(2) The Mayor shall coordinate with the Office of Human Rights and other agencies the Mayor deems appropriate to create an awareness campaign for the program established by this title.~~

~~(3) All outreach information shall comply with the Language Access Act of 2004, effective June 19, 2005 (D.C. Law 15-167; D.C. Official Code § 2-1931 *et seq.*).~~

~~See~~ 107. Coordination of benefits.

~~(a)(1) To the extent practicable, an eligible individual shall provide written notice to his or her employer of the need for the use of medical or family paid leave benefits provided in this Act.~~

~~————(2) The written notice shall include a reason for the absence involved, within the parameters of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191; 42 U.S.C. § 300gg, 29 U.S.C. § 1181 *et seq.* and 42 U.S.C. 1320d *et seq.*), and the expected duration of the paid leave.~~

~~————(3) If the paid leave is foreseeable, the written notice shall be provided at least 10 days, or as early as possible, in advance of the paid leave.~~

~~————(4) If the paid leave is unforeseeable, a notification, either oral or written, shall be provided prior to the start of the work shift for which the paid leave is being used.~~

~~————(5) In the case of an emergency, the eligible individual, or another individual on behalf of the eligible individual, shall notify the eligible individual's employer, either orally or in writing, within 48 hours of the emergency occurring.~~

~~(b)~~ (a) If family or parental paid leave taken pursuant to this ~~Act~~act also qualifies as protected leave pursuant to the Family and Medical Leave Act, of 1993, approved February 5,

1993 (107 Stat. 6; 29 U.S.C. 2601~~;~~) or D.C. FMLA, the paid leave taken pursuant to this ~~Act~~act shall run concurrently with, and not in addition to, leave taken under those other acts.

(~~eb~~) Nothing in this ~~Act~~act shall be construed to provide job protection to any ~~eligible individual covered employee~~ beyond that to which an individual is entitled under the ~~DC Family and Medical Leave Act, effective March 14, 1991 (D.C. Law 8-181; D.C. Official Code § 32-501 et seq.)~~D.C. FMLA.

(~~dc~~) A covered employer may provide ~~an eligible individual~~a covered employee with leave benefits in addition to those ~~provided by this Act; provided that the provision of such~~act.

(~~d~~) ~~If a covered employee is entitled to benefits, including a paid family or parental leave program, shall not exempt under this act from more than one covered employer, only the covered employer who most recently employed the covered employer providing such employee shall be responsible for payment of benefits or an eligible individual receiving such benefits from the provisions of this Act.~~

(~~e~~) ~~An eligible individual~~A covered employee receiving unemployment insurance, as defined by the District of Columbia Unemployment Compensation Amendment Act, ~~effective~~approved August 28, 1935 (~~Public Law 74-386~~49 Stat. 954; D.C. Official Code § 51-101 ~~et seq.~~).), shall not be eligible to receive benefits provided ~~for in~~by this ~~Act~~act.

(~~f~~) If ~~an eligible individual~~a covered employee is receiving long-term disability payments, he or she shall not be eligible to receive benefits provided for in this ~~Act~~act.

(~~g~~) ~~If an individual concurrently earns self employment income and is a covered employee employed by a covered employer, the individual shall not be entitled to receive double payments.~~

(~~h~~) (g) This title shall not:

(1) Supersede any provision of law, collective bargaining agreement, or other contract that provides paid leave rights in addition to the rights established under this

~~Aetact~~; or

(2) Prevent a covered employer from adopting or retaining a paid leave policy that supplements or otherwise provides greater benefits than are required by this ~~Aetact~~.

~~(h)~~(1) An individual's right to benefits provided ~~for in~~by this ~~Aetact~~ shall not be diminished by a collective bargaining agreement or other contract entered into or renewed after December 31, 2017.

(2) An individual's right to benefits provided ~~for in~~by this title shall not be diminished by an employer policy.

(3) Any agreement by an individual to waive his or her rights under this ~~Aetact~~ is void as against public policy.

Sec. ~~104108~~ ~~Appeals~~.

~~(a) No later than 60 days after an individual who has submitted a claim for family or parental paid leave benefits pursuant to this Act is notified that a determination has been made by the Mayor regarding his or her claim, the individual may appeal the claim determination to the Office of Administrative Hearings, including with respect to his or her eligibility for benefits, the weekly amount of benefits to be provided, or the duration of the time period during which benefits are to be paid.~~

~~(b) In connection with an appeal made pursuant to subsection (a) of this section, the Office of Administrative Hearings shall consider as evidence documentation including but not limited to: paystubs; personal checks, cash receipts, or bank deposits; work schedules;~~

440 ~~communications between employer and employee; and any circumstantial evidence regarding the~~
441 ~~employee's eligibility.~~

442 ~~(c) In any case where an employer has failed to keep or provide an employee with~~
443 ~~employment records as required under D.C. law or has failed to make contributions on wages~~
444 ~~paid to an employee as required under this Act, the Office of Administrative Hearings shall~~
445 ~~consider, as a rebuttable presumption, that the employee eligible and shall consider broadly~~
446 ~~evidence of the employee's eligibility for the benefit.~~

447 ~~(d) A complaint, other than a claim determination, shall be filed within 1 year of the~~
448 ~~occurrence or discovery of the alleged violation of this title, whichever is later.~~

449 ~~(e) For complaints, other than a claim determination, that arise under this title, the~~
450 ~~administrative enforcement procedure and relief shall be the same as that in the District of~~
451 ~~Columbia Family and Medical Leave Act of 1990, effective March 14, 1991 (D.C. Law 8-181;~~
452 ~~D.C. Official Code § 32-501 *et seq.*).~~

453 ~~(f) Notwithstanding any other provision of this title:~~

454 ~~(1) All correspondence, notices, determinations, or decisions required for the~~
455 ~~administration of this Act may be transmitted to claimants, employers, or necessary parties by~~
456 ~~electronic mail or other means of communication as the claimant, employer, or necessary party~~
457 ~~may select from the alternative methods of communication approved by the Mayor. The Mayor~~
458 ~~shall issue a list of such approved methods of communication within 90 days after the effective~~
459 ~~date of this Act.~~

460 ~~———(2) All correspondence, notices, determinations, or decisions issued by the Mayor~~
461 ~~may be signed by an electronic signature that complies with the requirements of D.C. Official~~
462 ~~Code § 28-4917 and Mayor's Order 2009-118, issued June 25, 2009.~~

~~Sec. 109. Erroneous payments and disqualification for benefits.~~

~~(a) An individual who makes a false statement or misrepresentation regarding a material fact, or fails to report a material fact, to obtain a benefit under this Act is disqualified from receiving family or parental paid leave benefits under this Act for a period of 3 years..~~

~~(b) If family or parental paid leave benefits provided for in this Act are paid erroneously or as a result of willful misrepresentation, or if a claim for family or parental paid leave benefits is rejected after benefits are paid, the Mayor shall seek repayment of benefits from the recipient; provided that the Mayor may exercise his or her discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.~~

~~(c)(1) If the Mayor obtains repayment of benefits from an individual who has made a willful misrepresentation or otherwise perpetrated fraud to obtain family or parental paid leave benefits provided for in this Act, the Mayor shall distribute a proportional share of the recovered amount to each covered employer who paid into the fund on behalf of that individual during the period that he or she improperly obtained benefits.~~

~~(2) For purposes of paragraph (1) of this subsection, a covered employer's proportional share of the recovered amount shall be equal to the amount paid into the fund by that covered employer on behalf of the individual during the period that he or she improperly obtained benefits, expressed as a percentage of the total amount paid into the fund by all covered employers on behalf of the individual during the period that he or she improperly obtained benefits.~~

~~Sec. 110. Prohibited acts.~~

~~(a) It shall be unlawful for anya person to interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided by this Act.~~

(b) It shall be unlawful for an employer to retaliate in any manner against ~~any~~ person because the person:

(1) Opposes any practice made unlawful by this ~~Act~~act;

(2) Pursuant or related to this title:

(A) Files or attempts to file a charge;

(B) Institutes or attempts to institute a proceeding; or

(C) Facilitates the institution of a proceeding; or

(3) Gives any information or testimony in connection with an inquiry or proceeding related to this ~~Act~~act.

Sec. 105. Reporting and Auditing requirement.

(a) A covered employer shall certify and annually file with the Chief Financial Officer information regarding the number of employees who received leave for a qualified event during the year; the amount of leave, type of leave and amount paid per employee.

(b) In consultation with the Chief Financial Officer of the District of Columbia, District of Columbia Auditor, Office of Human Rights, and the Department of Small and Local Business Development, the Mayor, or a designee of the Mayor, shall conduct an audit of the family and parental paid leave program within 18 months of the applicability date of this act, and on an annual basis thereafter, which shall be made publicly available and which shall include:

(1) An analysis of the availability, quality, and use of paid leave benefits for covered employers;

(2) A review of the effectiveness of the tax credit's intent to help small businesses;

508 (3) A study of any local or regional economic impact; information on disparities
509 in availability, quality, and use of paid leave benefits; and

510 (4) Policy recommendations, if any.

511 Sec. 106. Administrative hearing.

512 The Mayor shall establish reasonable procedures for filing a claim for a grievance under
513 this act and shall specify what supporting documentation is necessary to support such a claim.

514 An employee or employer claiming a violation of this act or contesting an order or penalty issued
515 pursuant to this act shall be entitled to the right to an appeal before an administrative law judge
516 of the Office of Administrative Hearings, established by section 5 of the Office of
517 Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76;
518 2-1831.02).

519 Sec.107. Economic hardship.

520 (a) A covered employer may apply for an economic hardship grant from the Mayor;
521 provided, that prior to issuance of the grant, the applicant establishes, to the satisfaction of the
522 Mayor, that the requirements of this act have caused or will cause undue financial hardship to the
523 covered employer.

524 (b) If a covered employer is granted economic hardship under subsection (a) of this
525 section; the grant may only be used to pay for benefits to which a covered employee is entitled
526 under this Act.

527 Sec. 108. ~~Sec. 111. Investigative authority.~~

528 ~~(a) An employer shall develop, maintain, and make available to the Mayor records~~
529 ~~regarding the employer's activities related to this chapter that the Mayor may prescribe by rule.~~

~~(b) To ensure compliance with the provisions of this chapter, the Mayor, consistent with constitutional guidelines, may:~~

~~—(1) Investigate and gather data regarding any wage, hour, condition, or practice of employment related to this chapter; and~~

~~—(2) Enter or inspect any place of employment or record required by this chapter.~~

~~(c) For the purpose of any investigation provided for in this section, the Mayor may exercise the subpoena authority provided in D.C. Official Code § 1-301.21..~~

~~Sec. 112. Enforcement by civil action.~~

~~(a) Subject to the provisions in subsection (b) of this section, an eligible individual or the Mayor may bring a civil action against any employer to enforce the provisions of this chapter in any court of competent jurisdiction.~~

~~(b)(1) No civil action may be commenced more than 1 Rights and responsibilities.~~

~~The rights and responsibilities established by this title shall apply one year after the occurrence or discovery of the alleged violation of this chapter.~~

~~—(2) This 1 year period shall be tolled during the course of any administrative proceedings or during any period when a covered employer has failed to comply with the notice provisionsapplicability date of this Acttitle.~~

~~**Title**TITLE II. Conforming Amendments.~~

Sec. 201. Section 6 of the Office of Administrative Hearings Establishment Act of 2001, effective March 2, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.03~~)~~, is amended by adding a new subsection (b-~~9~~11) to read as follows:

“(b-~~9~~11) In addition to those adjudicated cases listed in subsections (a), (b), (b-1), (b-2), (b-3), (b-4), (b-5), (b-6), (b-7), and (b-8) of this section, this act shall apply to all adjudicated

cases that arise from ~~Bill 21-415~~, the “Universal Paid Leave Act of 2016.”, passed on 2nd reading on December 20, 2016 (Enrolled version of Bill 21-415).

Sec. 202. ~~Paragraph 4 of~~ Section 2(4) of the D.C. Family and Medical Leave Act of 1990, effective March 14, 1991 (D.C. Law 8-181; D.C. Official Code § 32-501(4))), is amended as follows:

(a) Subparagraph (B) is amended by striking the word “or”.

(b) Subparagraph (C) is amended by striking the period and inserting the phrase “; or ” in its place.

(c) A new subparagraph (D) is added to read as follows:

“(D) A foster child.”.

Sec. 203. Section 1152 of ~~Title I.P. of the Fiscal Year 2017 Budget Support~~Universal Paid Leave Implementation Fund Act of 2016, effective October 8, 2016 (D.C. Law 21-160); 63 DCR 10775), is amended to read as follows:

(a) There is established as a special fund the Universal Paid Leave Implementation Fund (“Fund”), which shall be administered by the Office of the Chief Financial Officer in accordance with subsection (c) of this section.

(b) Money in the Fund shall be used to fund the implementation of the Universal Paid Leave Amendment Act of 2016~~established in this Act, which shall include paying for benefits, public education, and administrative costs required pursuant to this Act; provided that no more than 10% of the funds deposited into the Fund shall be used to pay for the administration of this Act for each fiscal year.~~, passed on 2nd reading on December 20, 2016 (Enrolled version of Bill 21-415).

(c)(1) The money deposited into the Fund, and any interest earned, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of the fiscal year, or at any other time.

(2) Subject to authorization in an approved budget and financial plan, any funds appropriated in the Fund shall be continually available without regard to fiscal year limitation.

(d) There shall be deposited into the Fund \$20,039,000 of local funds in Fiscal Year 2016.

(e) Revenue from the following sources shall be deposited into the Fund:

_____ (1) Monies collected pursuant to section 103 of ~~Title I~~ Universal Paid Leave Act of ~~this Act; 2016, passed on 2nd reading on December 20, 2016 (Enrolled version of Bill 21-415)~~ ("UPLA");

(2) Annual appropriations, if any;

(3) Interest earned upon the money in the Fund; and

(4) All other money received for the Fund from any other source.

(f) Money in the Fund shall be used only for the purposes of the family and parental paid leave program established by UPLA.

~~Sec. (g) Beginning with October 1, 2017, and quarterly thereafter, the Chief Financial Officer~~ 204. Subchapter VI of Title 47 of the District of Columbia ~~shall certify the balance of the Fund.~~

~~(h) Claims paid pursuant to this Act shall not be administered from the Fund until:~~

~~(1) at least one year after the effective date of this Act; and~~

~~(2) after the Chief Financial Officer of the District of Columbia certifies that the Fund will remain solvent for at least one year after claims have begun to be paid from the Fund.~~

598 ~~—— (i) The balance in the Fund shall not fall below the equivalent of nine months of~~
599 ~~benefits at any time during a fiscal year. If the Chief Financial Officer determines that the~~
600 ~~balance in the Fun will fall below the equivalent of nine months of benefits during a fiscal year,~~
601 ~~the Chief Financial Officer shall promptly notify the Mayor and the Council and present a plan,~~
602 ~~including recommended legislative changes, if any, to address the shortfall. If the balance in the~~
603 ~~Fund falls below the equivalent of six months of benefits, the District shall immediately cease~~
604 ~~any further payments of benefits. If payment of benefits~~Official Code ~~is ceased in accordance~~
605 ~~with this section, payment of benefits shall not resume until the Fund balance is equal to the~~
606 ~~equivalent of twelve months of benefits.~~amended as follows:

607 ~~(j) By December 30, 2017, the Mayor, in coordination with the Office of the Chief~~
608 ~~Financial Officer, shall provide an update to the Council as to the funds that have thus far been~~
609 ~~deposited into the Fund and the expected timeline for beginning to make payment of claims~~
610 ~~under this Act.~~

611 ~~—— (k) By October 1, 2018, and annually thereafter, the Mayor shall submit a report to the~~
612 ~~Council about the financial management, claim management, operation, and use of the Fund and~~
613 ~~family and parental paid leave program established in this Act.~~

614 **Title(a) The table of contents is amended by adding a new section designation to read as**
615 **follows:**

616 “47-1806.15. Tax on residents and nonresidents – Credits – Refundable small employer
617 paid leave tax credit.”

618 (b) A new section 47-1806.15 is added to read as follows:

619 “§ 47-1806.15. Tax on residents and nonresidents – Credits – Refundable small
620 employer paid leave tax credit.

621 “(a) For tax years beginning on or after January 1, 2018, a District employer may claim a
622 refundable credit against taxes imposed by this subchapter for paid leave benefits paid to
623 employees required by the Universal Paid Leave Amendment Act of 2016 passed on 2nd reading
624 on December 20, 2016 (Enrolled version of Bill 21-415).

625 “(b) For a covered employer who employs fewer than 70 covered employees, the credit
626 claimed in subsection (a) shall be equal to \$200 per covered employee per year.

627 “(c) The Chief Financial Officer or his designee shall promulgate regulations as may be
628 necessary and appropriate to carry out provisions of this section, including requiring
629 documentation supporting the claim.

630 TITLE III ~~Fiscal impact and effective date.~~ GENERAL PROVISIONS.

631 Sec. 301. Applicability.

632 (a) This act shall apply upon the date of inclusion of its fiscal effect in an approved
633 budget and financial plan.

634 (b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in an
635 approved budget and financial plan, as certified by the Chief Financial Officer and provide notice
636 to the Budget Director of the Council in

637 of the certification.

638 (c)(1) The Budget Director shall cause the notice of the certification to be published by
639 the Council in the District of Columbia Register.

640 (2) The date of publication of the notice of the certification shall not affect the
641 applicability of this act.

642 Sec. 302. Fiscal impact statement.

643 The Council adopts the fiscal impact statement in the committee report as the fiscal
644 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
645 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

646 Sec. 303. Effective date.

647 This act shall take effect following approval of the Mayor (or in the event of veto by the
648 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
649 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
650 24, 1973 (87 Stat. 813; D.C Official Code § 1-206.22(c)(1)), and publication in the District of
651 Columbia Register.